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No. 86-955

Supreme Court, U.S.

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IN THE

Supreme Court of the United States

October Term, 1986

STEAG HANDEL GmbH,

Petitioner,

v.

HAWLEY FUEL COALMART, INC. and
HAWLEY FUEL COAL, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Second Circuit

RESPONDENTS' BRIEF IN OPPOSITION

GEORGE BERGER
40 West 57th Street,
New York, New York 10019
(212) 977-9700

Counsel of Record

Of Counsel:

DEBRA A. ROTH
PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON
40 West 57th Street
New York, New York 10019

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Counterstatement of Questions Presented

1. Is it appropriate to grant a writ of certiorari where the only issue to be determined is whether the documentary evidence satisfied the requirements of the New York State Statute of Frauds?

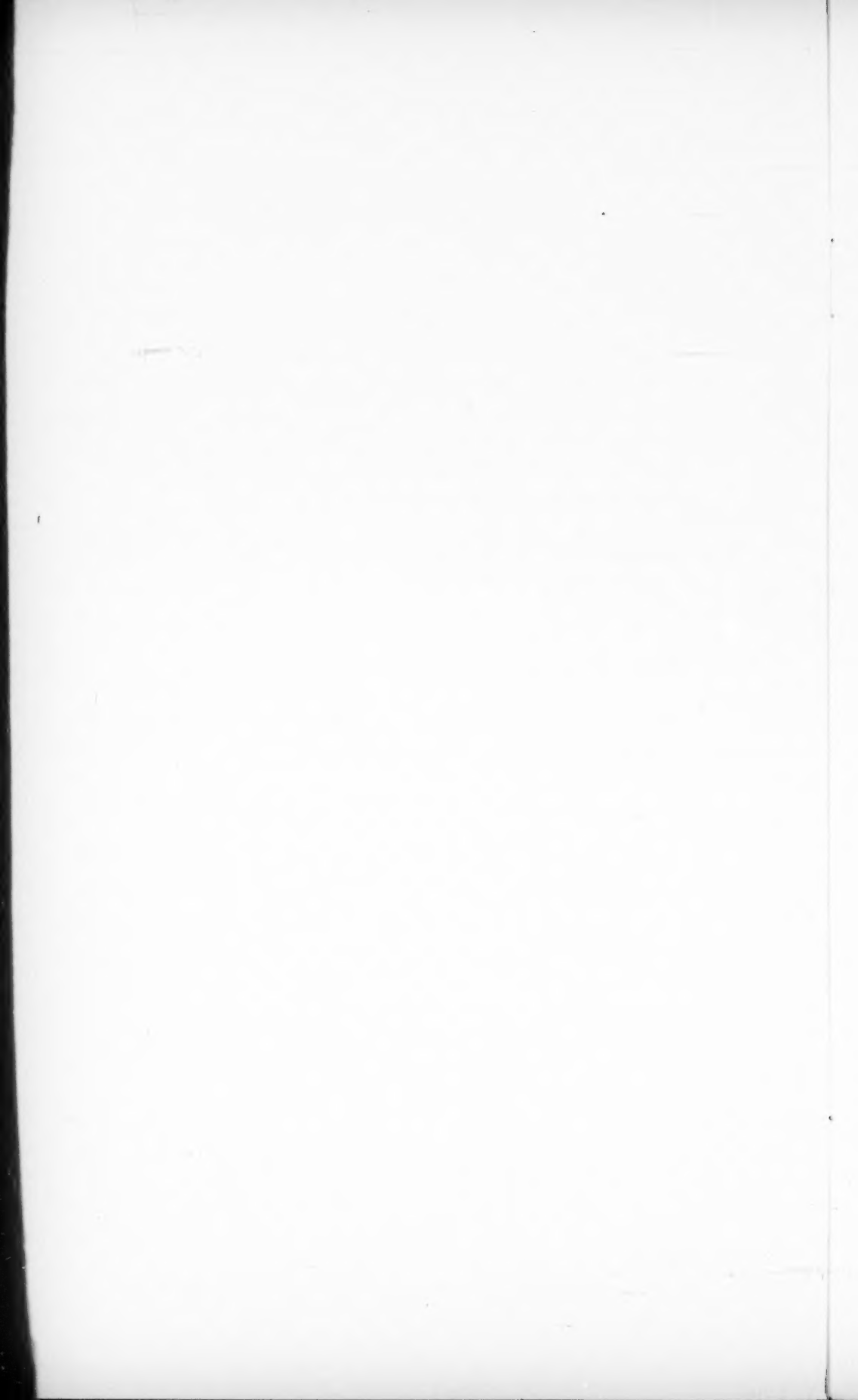
2. Is it proper to grant a writ of certiorari based upon alleged impermissible fact-finding, where the Court of Appeals only reinstated a jury verdict and thereby restored the fact finding function to the body charged with that responsibility in a jury trial—the jury?

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The respondents* respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Court of Appeals' opinion and order reversing the district court's judgment notwithstanding the verdict and reinstating the jury verdict. That opinion is reported at 796 F.2d 29. A motion for rehearing and a suggestion for rehearing *en banc* were denied.

Counterstatement of the Case

Respondents adopt the statement of the facts appearing in the unanimous decision of the Court of Appeals. As appears therefrom, the issue on appeal was the sufficiency of the documentary proof to satisfy the New York Statute of Frauds. 796 F.2d at 30, Appendix B at 4a.

* The corporate parent of both respondents is the Hawley Fuel Corporation, which is privately held.

REASONS WHY THE PETITION SHOULD BE DENIED

I.

The Court of Appeals Properly Considered and Applied New York Law Concerning the Statute of Frauds.

In its "Statement of the Case", petitioner* concedes the principal reason why it would be inappropriate for this Court to grant a writ of certiorari in this case. Petitioner states: "This case involves the application of the New York Statute of Frauds . . . to an alleged contract of guarantee. . . ." Petition at 3. This Court simply has not chosen to review questions as mundane as whether the writings in evidence in a particular case satisfied the New York Statute of Frauds. Stern, Gressman & Shapiro, *Supreme Court Practice* § 4.10, at 211-12 (6th ed. 1986). For obvious reasons, any decision rendered in such a case would not present any guidance to lower courts in adjudicating future controversies involving other agreements and other writings. *Id.* § 4.11, at 217-18.

Notwithstanding this concession, petitioner argues that the Court of Appeals failed to apply controlling New York law and thereby violated principles of federalism. This contention is simply untrue. The Court of Appeals simply held that the documentary evidence in the instant case satisfied the requirements for a writing under the New York Statute of Frauds. Even a cursory review of the Court of Appeals' opinion reveals that all of its citations

* While the appeal was *sub judice* in the Court of Appeals, petitioner commenced liquidation proceedings in Germany. Technically, it should have indicated this status in its filing herein and on its motion for rehearing below.

to authority are to New York statutes and decisions (save for one citation to a textbook and another to a law review note.) Indeed, petitioner does not even acknowledge that the Court of Appeals, in rejecting respondents' first argument that the transaction at issue was not even within the Statute of Frauds, found the controlling New York law to be in petitioner's favor. It is thus clear that the Court of Appeals applied New York State law throughout.

Confronted with the Court of Appeals' reliance on New York authorities, and its own concession that this case is strictly limited to state law issues, the petitioner next argues that the Court of Appeals "rejected" New York law. Petition at 10.* To make this argument, the petitioner, however, has resorted to distorting the Court of Appeals' opinion. Thus, petitioner contends that in determining the sufficiency of a writing to satisfy the requirements of the Statute of Frauds, the Court of Appeals stated it would be "unduly technical to make the pleading outcome determinative." *Id.* However, the court's comment was not directed at whether the writings were sufficient. Rather, the Court of Appeals was addressing petitioner's arguments that the amended complaint did not, in *haec verba*, allege the precise agreement proven at trial, a question of federal procedure, not New York State substantive law. 796 F.2d at 34, Appendix B at 13a.

Finally, petitioner's effort to raise the chimera of increased federal litigation as a result of the Court of Appeals' decision is spurious. As above noted, the Court of Appeals simply held that the district court erred when

* Ironically, it was the district court which refused to follow the decision of New York's Appellate Division in *Holender v. Fred Cammann Productions, Inc.*, 78 A.D.2d 233, 434 N.Y.S.2d 266 (1st Dep't 1980). 614 F. Supp. at 365 n.4, Appendix C at 27a.

it set aside the jury verdict and declared the documents to be insufficient for Statute of Frauds purposes. Notwithstanding petitioner's doomsday pronouncements, such a holding does not signal an all-out assault on the New York Statute of Frauds. Rather, it applies the Statute of Frauds to the facts and documents of this case. Nor is there any logic to petitioner's warning that the Court of Appeals' decision will result in a stampede to the federal courts.

II.

The Court of Appeals Properly Returned the Fact-Finding Responsibility to the Jury.

Petitioner, much as it did below, misconstrues the function of the district court in this action in order to argue that the Court of Appeals engaged in impermissible fact finding. This action was, first and foremost, a jury trial. Over a six day period, the jury heard conflicting testimony, evaluated the written communications and then rendered its verdict, first as to liability and then as to damages. The jury was specifically asked to answer a set of written interrogatories, and, in response thereto, it specifically found, *inter alia*, that Steag agreed to guarantee the payment of all sums owed by Alla to Hawley with respect to all coal delivered and to be delivered under open purchase orders between Alla and Hawley. 796 F.2d at 31, Appendix B at 7a.

Thereafter, in response to petitioner's motion, the district court set aside the verdict and made its own findings of fact concerning the evidence, notwithstanding its clear acknowledgement that its role was limited to the legal question of the sufficiency of the documents pursuant to the Statute of Frauds. 614 F. Supp. at 363, Appendix C

at 19a. On appeal, petitioner sought to sanction this improper usurpation of the jury's function. To support this argument, however, petitioner relied upon cases in which the court, and not the jury, was the fact-finder. Similarly, in its petition to this Court, petitioner has once again relied upon authority in which the judge, and not the jury, was charged with the responsibility of finding the facts. *See, e.g., Icicle Seafoods, Inc. v. Worthington*, 106 S.Ct. 1527, 1529, 89 L.Ed.2d 739, 744 (1986) (Petition at 12) ("We therefore reaffirm our holding . . . that the facts necessary to a proper determination of the legal question whether an exemption applies in a particular case should be reviewed by the courts of appeals pursuant to Rule 52(a), *like the facts in other civil bench-trying litigation in federal courts.*" (Emphasis added.)

The Court of Appeals approached its role from the proper premise—the jury verdict (which was not challenged on appeal as being against the weight of evidence) established the making of the agreement and its terms. The court's role then was limited to the examination of the writings to determine that whatever formalities required by the New York Statute of Frauds were satisfied. Far from engaging in impermissible fact-finding, the Court of Appeals properly held that the alleged distinction between the agreement evidenced by the documents and that found by the jury, simply did not exist. 796 F.2d at 34, Appendix B at 12a.

Thus, the question presented by petitioner both misstates and misconstrues the purport of the Court of Appeals' decision. In reversing the district court, the Court of Appeals simply returned to the jury its true fact-finding function which the lower court had improperly aggregated to itself. It is clear therefore that petitioner's request for a writ of certiorari on this ground must also fail.

Conclusion

For the foregoing reasons, the petition for certiorari should be denied.

Dated: January 2, 1987

Respectfully submitted,

GEORGE BERGER
40 West 57th Street,
New York, New York 10019
(212) 977-9700

Counsel of Record

Of Counsel:

DEBRA A. ROTH
PHILLIPS, NIZER, BENJAMIN,
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